

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

MICHAEL P. AND SHELLIE GILMOR,  
et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION,  
et al.,

Defendants.

Case No. 10-0189-CV-W-ODS

**MOTION TO STRIKE DECLARATION OF NANCY POLLARD**

Defendant IMH Assets Corporation (IMHAC) attached the Declaration of Nancy Pollard to its Reply Suggestions in Support of its Motion to Dismiss Plaintiffs' Sixth Amended Petition for Lack of Personal Jurisdiction. (Doc. 141-1) This is the first time IMHAC ever attempted to file the declaration – or any declaration, affidavit or evidence in support of its nearly five year old motion to dismiss. (Doc. 75, Ex. 14) IMHAC's efforts are too little too late and the Court should strike the Pollard Declaration. The submission of a declaration for the first time with reply suggestions is patently improper. Fed.R.Civ.P. 6(c)(2). Moreover, the Pollard Declaration is particularly troubling since Ms. Pollard's statements actually support Plaintiffs' opposition to the motion to dismiss. The Declaration confirms that IMHAC actually "held mortgage loans" as a member of the Impac Defendant Group (Doc. 141-1, ¶4), but conspicuously and disingenuously fails to mention or dispute that Impac Funding Corporation (IFC) is in fact registered to do business in Missouri, that some of the "mortgage loans" that IFC and IMHAC admittedly "held" were Missouri mortgage loans, that some of those Missouri "mortgage loans" were the PCC-originated loans at issue in this case, and that at least one of the PCC-originated

loans that IMHAC admittedly “held” was made to Named Plaintiff Leo Parvin, Jr. (Doc. 141-1, ¶¶1-6) The Pollard Declaration, instead, seeks to belatedly bolster IMHAC’s unsupported challenge to the Court’s personal jurisdiction through a few self-serving legal conclusions that noticeably omit the material facts on which the resolution of the issue will turn (e.g., the nature and extent of the Impac Defendants Missouri real estate and other holdings, the collection, foreclosure and other activities of the Impac Defendants with regard to their Missouri holdings, the Impac Defendants’ relationship with PCC and each other, the Impac Defendants’ relationship with Named Plaintiff Leo Parvin and the other members of the PCC Borrower Class, the financial interest of IMHAC in the Missouri loans and as a member of the Impac Group). Despite these material omissions, IMHAC continues on with its motion to dismiss, even though IMHAC effectively concedes through its conduct that the motion was not (and cannot be) supported. Under circumstances such as these, IMHAC and its counsel should have immediately withdrawn their pending motion to dismiss, as Defendants Litton and LaSalle have done. (Doc. 141 at 3)<sup>1</sup>

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<sup>1</sup> Plaintiffs, of course, in no way condone or excuse IMHAC or its counsel for filing a baseless motion, but do acknowledge that the decision to drop such a motion, as Defendants Litton and LaSalle have done, is better than pursuing it to the end. IMHAC’s motion simply cannot stand. As the admitted assignee of the allegedly illegal loans, IMHAC is liable for PCC’s statutory violations and illegal loans – regardless of the length of time it actually held the loans. *See* 15 U.S.C. § 1641(d)(1) (“Any person who purchases or is otherwise assigned a mortgage referred to in section 1602(aa) of this title shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, ...”); *Thomas v. U.S. Bank Nat. Ass’n ND*, 575 F.3d 794, 800-801 (8<sup>th</sup> Cir.(Mo.) 2009) (“[a]s assignees, [the defendants] are subject to all the claims which could have been brought against the originator of the loan”); *Schwartz v. Bann-Cor Mortgage*, 197 S.W.3d 168, 178-179 (Mo. App. WD 2006) (assignees of high-cost loans “are subject to all claims and defenses under any law that a borrower could have asserted against the original lender”); *see also Mitchell v. Residential Funding Corp.*, ---S.W.3d---, 2010 WL 4720755 at \*16-17 (Mo. App. WD Nov.23, 2010) (assignees of illegal loans can properly be found to have violated the MSMLA and § 408.233.1 even if the assignees “never received the fees or interest, never charged for them, or never contracted for them”). IMHAC’s financial interest in the loans, which has yet to be discovered, its participation in the Impac loan acquisition/securitization program, and its status as a derivatively liable assignee under consumer protection legislation (HOEPA and the MSMLA), undeniably render IMAC amenable to suit in Missouri.

For any or all of the above reasons, the Court should strike the Pollard Declaration. The declaration is untimely and improper and serves only to corroborate Plaintiffs' point that IMHAC's motion to dismiss lacks merit and should be denied. The Court should also admonish IMHAC and its counsel for their obstreperous conduct in this case, which has now grown to include the continued prosecution of baseless motions (Doc. 75, Ex. 7, 14), in addition to prior conduct necessitating Court intervention to enforce compliance with routine discovery. (Doc. 112, 118)

Dated: December 28, 2010

Respectfully Submitted,

WALTERS BENDER STROHBEHN  
& VAUGHAN, P.C.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document was filed electronically with the Clerk of the United States District Court for the Western District of Missouri, Western Division, this **28<sup>th</sup> day of December 2010**, with notice of case activity to be generated and sent electronically to all designated persons.

/s/ Kip D. Richards